Court, U. S.
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CHARLES ELMORE CROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 164-1165

LORRAINE CASTLE APARTMENTS BUILDING CORPORATION, INC., ET AL.,
Petitioners,

vs.

JUSTIN MACKIEWICH, ET AL.,
Respondents.

ANGELO CASTELLANI, ET AL.,
Petitioners,

vs.

JAMES W. McNICHOLS, TRUSTEE, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT WITH SUPPORTING BRIEF.

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PETITION.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Lorraine Castle Apartments Building Corporation, Inc., Angelo Castellani, Margaret Castellani and Edward Gorman, pray that a Writ of Certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit in the causes entitled: In the mat-

ter of Lorraine Castle Apartments Building Corporation, Inc., debtor; Lorraine Castle Apartments Building Corporation, et al, v. Mackiewich, et al, No. 8591, and Angelo Castellani, et al, v. McNichols, trustee, et al, No. 8597, affirming two orders of the District Court for the Northern District of Illinois, Eastern Division, in a reorganization proceeding under Chapter X of the Bankruptcy Act.

Summary Statement of Matters Involved.

In a voluntary proceeding for reorganization under Chapter X of the Bankruptcy Act the debtor sought an extension of time for payment of its bonds in full with interest or, in the alternative, immediate retirement of the bonds by borrowing as much as possible and making an additional contribution. In this way 80 cents on the dollar was assured to the bondholders, more than two-thirds of whom were willing to accept 80 cents on the dollar. The special master filed a report, of which no notice was given to the bondholders generally, recommending approval of debtor's plan of reorganization if bondholders received 85 cents on the dollar. Without informing bondholders of the report, speculators, one of whom had falsely stated to the special master that he represented a bondholder, solicited and bought up two-thirds of the bonds at less than 80 cents on the dollar for the purpose of preventing any reorganization and forcing a liquidation.

The District Court entered orders (1) denying a petition to restrict the claims of the speculators to the amounts they paid, and (2) approving a plan of "reorganization" providing for immediate liquidation, refusing to approve and submit the debtor's further proposal to contribute additional funds, make immediate distribution to bondholders of a substantial amount and pay the balance of

all claims in full in five years with interest at 5%, or, if such claims were so limited, to make immediate payment of all claims in full. The Circuit Court of Appeals affirmed both orders.

Opinions Below.

The opinion of the District Court for the Northern District of Illinois, Eastern Division, appears in the record at pages 446-451, and is reported in 42 Fed. Suppl. 973. The opinion of the Circuit Court of Appeals for the Seventh Circuit appears in the record at pages 495-502. The judgment of the Circuit Court of Appeals was entered on May 4, 1945 (R. 503). On May 16, 1945 an order was entered staying the issuance of mandates for a period of 45 days to enable petitioners to apply to this Court for the Writ of Certiorari (R. 505).

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended. (28 U.S.C.A. 347.)

Questions Presented.

The questions presented by this petition for a writ of certiorari are:

1. While the Court in a Chapter X proceeding is in the process of working out a plan agreeable to the debtor and more than two-thirds of its creditors, is interference by speculators who connive and conspire to solicit and buy up more than two-thirds of debtor's bonds while the debtor's hands are tied, with the object of preventing reorganization and forcing liquidation, a violation of Chapter X of the Bankruptcy Act.

2. Under such circumstances should the Court have summarily denied the petition to restrict claims so purchased to the amount paid for them.

3. Under such circumstances should the Court have refused to submit to the creditors the debtor's proposal to contribute additional funds, make immediate distribution of a substantial amount, pay the balance of all claims in full in five years, with interest at 5%, or if such claims were so limited, to make immediate payment of all claims in full.

4. Under such circumstances does Chapter X of the Bankruptcy Act upon a voluntary petition for reorganization, permit liquidation under the guise of reorganization, without an adjudication in ordinary bankruptcy.

Reasons Relied Upon for the Allowance of the Writ of Certiorari.

I. The Circuit Court of Appeals for the Seventh Circuit has decided an important question of federal law which has not been, but should be, settled by this Court, namely: Is the solicitation by speculators of a debtor's bonds during the pendency of a reorganization proceeding under Chapter X of the Bankruptcy Act *for the purpose of preventing a reorganization* prohibited by the Act or general equitable principles, or is it to be sanctioned in order not to "destroy or impair the sales value of securities by abolishing the profit motive which inspires purchasers".

II. The Circuit Court of Appeals for the Seventh Circuit has decided a federal question in a way probably in conflict with an applicable decision of this Court, to-wit, *Fidelity Assurance Assn.* v. *Sims*, 318 U. S. 608, in which this Court said that "the statute does not contemplate a liquidation in a Chapter X proceeding, but a liquidation in ordinary bankruptcy, or a dismissal outright."